

2009 DRAFTING REQUEST

Bill

Received: **04/29/2009**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Karl Van Roy (608) 266-0616**

By/Representing: **tanya**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Business - credits**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.VanRoy@legis.wisconsin.gov**

Carbon copy (CC:) to: **joseph.kreye@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Income and franchise tax credit for property taxes paid on restaurant kitchen machinery and equipment

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 04/29/2009	jdye 04/29/2009					State
/1			phenry 04/29/2009		cduerst 04/29/2009	cduerst 05/18/2009	

FE Sent For:

<END>

→ At Intro.

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/?	jkreye	1 jld 4/29	4/29 ph	4/29 ph/mo			

FE Sent For:

<END>

2009 BILL

stays

~~2007 ASSEMBLY BILL 138~~

March 5, 2007 - Introduced by Representatives VAN ROY, SHILLING, ALBERS, BALLWEG, GRONEMUS, GUNDERSON, HAHN, JESKEWITZ, F. LASEE, NYGREN, OWENS, A. OTT, SEIDEL, TOWNSEND, VOS and WOOD, cosponsored by Senators LEIBHAM, PLALE, GROTHMAN, LAZICH and KANAVAS. Referred to Committee on Small Business.

✓
 1 AN ACT *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34 (1) (g), 71.45 (2)
 2 (a) 10. and 77.92 (4); and *to create* 71.07 (5i), 71.10 (4) (gxx), 71.28 (5i), 71.30
 3 (3) (epa), 71.47 (5i) and 71.49 (1) (gxx) of the statutes; **relating to:** an income
 4 and franchise credit for property taxes paid on restaurant kitchen machinery
 5 and equipment. ✓

Analysis by the Legislative Reference Bureau

This bill creates an income and franchise tax credit in an amount that is equal to the amount of property taxes that a taxpayer paid in the taxable year on machinery and equipment, including refrigerators and other storage equipment, used primarily in the operation of a restaurant's kitchen to prepare or serve food or beverages. Under the bill, a restaurant includes pizza delivery establishments, snack bars, beverage bars, takeout food shops, and mobile food services, including mobile snack stands, mobile canteens, and ice cream vendors.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 SECTION 1. 71.05 (6) (a) 15. of the statutes is amended to read:

ASSEMBLY BILL 138

SECTION 1

71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3n), (3s), (3t), (3w), (5b), (5d), and (5e), (5f), and (5h), and (5i) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g).

SECTION 2. 71.07 (5i) of the statutes is created to read:

71.07 (5i) RESTAURANT KITCHEN EQUIPMENT CREDIT. (a) *Definitions.* In this subsection:

1. "Claimant" means a person who files a claim under this subsection.

2. "Machinery" has the meaning given in s. 70.11 (27) (a) 2.

3. "Restaurant" includes pizza delivery establishments, snack bars, beverage bars, takeout food shops, and mobile food services, including mobile snack stands, mobile canteens, and ice cream vendors.

(b) *Filing claims.* Subject to the limitations provided in this subsection, a claimant may claim as a credit against the taxes imposed under s. 71.02, up to the amount of those taxes, an amount that is equal to the taxes imposed under ch. 70 that the claimant paid in the taxable year on machinery and equipment, including refrigerators and other storage equipment, used primarily in the operation of a restaurant's kitchen to prepare or serve food or beverages.

(c) *Limitations.* Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of amounts under par. (b). A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited

ASSEMBLY BILL 138

liability companies, and shareholders of tax-option corporations[✓] may claim the credit in proportion to their ownership interests.

(d) *Administration*.[✓] Section 71.28 (4) (e) to (h),[✓] as it applies to the credit under s. 71.28[✓] (4), applies to the credit under this subsection.[✓]

SECTION 3. 71.10 (4) (gxx)^(cs) of the statutes is created to read:

71.10 (4) (gxx)^(cs) Restaurant kitchen equipment credit[✓] under s. 71.07 (5i)⁽⁵ⁿ⁾

SECTION 4. 71.21 (4) of the statutes is amended to read:

71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3n), (3s), (3t), (3w), (5b), (5e), (5f), (5g), and (5h), and (5i) and passed through to partners shall be added to the partnership's income.

SECTION 5. 71.26 (2) (a) of the statutes is amended to read:

71.26 (2) (a) *Corporations in general*. The "net income" of a corporation means the gross income as computed under the Internal Revenue Code as modified under sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit computed under s. 71.28 (1), (3), (4), and (5) minus, as provided under s. 71.28 (3) (c) 7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income under this paragraph at the time that the taxpayer first claimed the credit plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3g), (3n), (3t), (3w), (5b), (5e), (5f), (5g), and (5h), and (5i) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, limited liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus the amount of losses from the sale or other disposition of assets the gain from which would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or otherwise disposed of at a gain and minus deductions, as computed under the Internal Revenue

ASSEMBLY BILL 138

SECTION 5

Code as modified under sub. (3), plus or minus, as appropriate, an amount equal to the difference between the federal basis and Wisconsin basis of any asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

SECTION 6. 71.28 (5i) of the statutes is created to read:

71.28 (5i) RESTAURANT KITCHEN EQUIPMENT CREDIT. (a) Definitions. In this subsection:

1. "Claimant" means a person who files a claim under this subsection.
2. "Machinery" has the meaning given in s. 70.11 (27) (a) 2.
3. "Restaurant" includes pizza delivery establishments, snack bars, beverage bars, takeout food shops, and mobile food services, including mobile snack stands, mobile canteens, and ice cream vendors.

(b) Filing claims. Subject to the limitations provided in this subsection, a claimant may claim as a credit against the taxes imposed under s. 71.23, up to the amount of those taxes, an amount that is equal to the taxes imposed under ch. 70 that the claimant paid in the taxable year on machinery and equipment, including refrigerators and other storage equipment, used primarily in the operation of a restaurant's kitchen to prepare or serve food or beverages.

(c) Limitations. Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of amounts under par. (b). A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited

ASSEMBLY BILL 138

SECTION 6

liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interests.

(d) *Administration.* Subsection (4) (e) to (h), as it applies to the credit under sub. (4), applies to the credit under this subsection.

SECTION 7. 71.30 (3) (epa) of the statutes is created to read:

71.30 (3) (epa) Restaurant kitchen equipment credit under s. 71.28 (5i) (5n)

SECTION 8. 71.34 (1) (g) of the statutes is amended to read:

71.34 (1) (g) An addition shall be made for credits computed by a tax-option corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), (3g), (3n), (3t), (3w), (5b), (5e), (5f), (5g), and (5h), and (5i) and passed through to shareholders.

SECTION 9. 71.45 (2) (a) 10. of the statutes is amended to read:

71.45 (2) (a) 10. By adding to federal taxable income the amount of credit computed under s. 71.47 (1dd) to (1dx), (3n), (3w), (5b), (5e), (5f), (5g), and (5h), and (5i) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, limited liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), and (5).

SECTION 10. 71.47 (5i) of the statutes is created to read:

71.47 (5i) RESTAURANT KITCHEN EQUIPMENT CREDIT. (a) *Definitions.* In this subsection.

1. "Claimant" means a person who files a claim under this subsection.

2. "Machinery" has the meaning given in s. 70.11 (27) (a) 2.

INDENT
5-18

ASSEMBLY BILL 138

SECTION 10

1 3. "Restaurant" includes pizza delivery establishments, snack bars, beverage
2 bars, takeout food shops, and mobile food services, including mobile snack stands,
3 mobile canteens, and ice cream vendors.

4 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
5 claimant may claim as a credit against the taxes imposed under s. 71.43, up to the
6 amount of those taxes, an amount that is equal to the taxes imposed under ch. 70 that
7 the claimant paid in the taxable year on machinery and equipment, including
8 refrigerators and other storage equipment, used primarily in the operation of a
9 restaurant's kitchen to prepare or serve food or beverages.

10 (c) *Limitations.* Partnerships, limited liability companies, and tax-option
11 corporations may not claim the credit under this subsection, but the eligibility for,
12 and the amount of, the credit are based on their payment of amounts under par. (b).
13 A partnership, limited liability company, or tax-option corporation shall compute
14 the amount of credit that each of its partners, members, or shareholders may claim
15 and shall provide that information to each of them. Partners, members of limited
16 liability companies, and shareholders of tax-option corporations may claim the
17 credit in proportion to their ownership interests.

18 (d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under
19 s. 71.28 (4), applies to the credit under this subsection.

20 SECTION 11. 71.49 (1) (gxx) of the statutes is created to read:

21 71.49 (1) (gxx) Restaurant kitchen equipment credit under s. 71.47 (5i)

22 SECTION 12. 77.92 (4) of the statutes is amended to read:

23 77.92 (4) "Net business income," with respect to a partnership, means taxable
24 income as calculated under section 703 of the Internal Revenue Code; plus the items
25 of income and gain under section 702 of the Internal Revenue Code, including taxable

ASSEMBLY BILL 138

1 state and municipal bond interest and excluding nontaxable interest income or
2 dividend income from federal government obligations; minus the items of loss and
3 deduction under section 702 of the Internal Revenue Code, except items that are not
4 deductible under s. 71.21; plus guaranteed payments to partners under section 707
5 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
6 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3s), (3n), (3t), (3w), (5b), (5e), (5f),
7 (5g), and (5h), and (5i); and plus or minus, as appropriate, transitional adjustments,
8 depreciation differences, and basis differences under s. 71.05 (13), (15), (16), (17), and
9 (19); but excluding income, gain, loss, and deductions from farming. "Net business
10 income," with respect to a natural person, estate, or trust, means profit from a trade
11 or business for federal income tax purposes and includes net income derived as an
12 employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

13 **SECTION 13. Initial applicability.**

14 (1) This act first applies to taxable years beginning on January 1, 2008.
15

(END)

✓
INSERT
7-12

✓
2009 ✓

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2801/?ins
JK:.....

Insert 2 - 5

1 **SECTION 1.** 71.05 (6) (a) 15. of the statutes, as affected by 2009 Wisconsin Act
2 2, is amended to read:

3 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
4 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3r), (3s), (3t),
5 (3w), (5e), (5f), (5h), (5i), (5j), ~~and (5k)~~, and (5n) and not passed through by a
6 partnership, limited liability company, or tax-option corporation that has added that
7 amount to the partnership's, company's, or tax-option corporation's income under s.
8 71.21 (4) or 71.34 (1k) (g).

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2.

Insert 4 - 4

9 **SECTION 2.** 71.21 (4) of the statutes, as affected by 2009 Wisconsin Act 2, is
10 amended to read:

11 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
12 (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3r), (3s), (3t), (3w), (5e),
13 (5f), (5g), (5h), (5i), (5j), ~~and (5k)~~, and (5n) and passed through to partners shall be
14 added to the partnership's income.

History: 1987 a. 312, 411; 1989 a. 31; 1993 a. 112; 1995 a. 27, 400; 1997 a. 27; 2001 a. 16; 2003 a. 99, 135, 255, 326; 2005 a. 74, 361, 479, 483; 2007 a. 20, 96; 2009 a. 2.

15 **SECTION 3.** 71.26 (2) (a) 4. of the statutes, as affected by 2009 Wisconsin Act 2,
16 is amended to read:

17 71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),
18 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3r), (3t), (3w),
19 (5e), (5f), (5g), (5h), (5i), (5j), ~~and (5k)~~, and (5n) and not passed through by a
20 partnership, limited liability company, or tax-option corporation that has added that



1 amount to the partnership's, limited liability company's, or tax-option corporation's
2 income under s. 71.21 (4) or 71.34 (1k) (g).

(end ins 4-4)
History: 1987 a. 312; 1987 a. 411 ss. 22, 124 to 129; 1989 a. 31, 336; 1991 a. 37, 39, 221, 269; 1993 a. 16, 112, 246, 263, 399, 437, 491; 1995 a. 27, 56, 351, 371, 380, 428; 1997 a. 27, 37, 184, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 106, 109; 2003 a. 33, 85, 99, 135, 255, 326; 2005 a. 25, 74, 335, 361, 362, 479, 483; 2007 a. 20, 96, 97, 151, 226; 2009 a. 2.

Insert 5 - 18

3 **SECTION 4.** 71.34 (1k) (g) [✓] of the statutes, as affected by 2009 Wisconsin Act 2,
4 is amended to read:

5 71.34 (1k) (g) An addition shall be made for credits computed by a tax-option
6 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy),
7 (3), (3g), (3h), (3n), (3p), (3r), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), and (5k), and (5n) [✓]
8 and passed through to shareholders.

History: 1987 a. 312; 1987 a. 411 ss. 18, 23, 146; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 16, 109; 2003 a. 33, 99, 135, 255, 326; 2005 a. 25, 49, 74, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2.

9 **SECTION 5.** 71.45 (2) (a) 10. [✓] of the statutes, as affected by 2009 Wisconsin Act
10 2, [✓] is amended to read:

11 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
12 computed under s. 71.47 (1dd) to (1dy), (3h), (3n), (3p), (3r), (3w), (5e), (5f), (5g), (5h),
13 (5i), (5j), and (5k), and (5n) [✓] and not passed through by a partnership, limited liability
14 company, or tax-option corporation that has added that amount to the partnership's,
15 limited liability company's, or tax-option corporation's income under s. 71.21 (4) or
16 71.34 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), and
17 (5).

History: 1987 a. 312; 1989 a. 31, 336, 359; 1991 a. 37, 39, 269; 1993 a. 16, 112, 263, 437; 1995 a. 27, 56, 371, 380; 1997 a. 27, 37, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 109; 2003 a. 37, 85, 99, 135, 255, 326; 2005 a. 74, 297, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2.

Insert 7 - 12

18 **SECTION 6.** 77.92 (4) [✓] of the statutes, as affected by [✓] 2009 Wisconsin Act 2, is
19 amended to read:



1 77.92 (4) "Net business income," with respect to a partnership, means taxable
2 income as calculated under section 703 of the Internal Revenue Code; plus the items
3 of income and gain under section 702 of the Internal Revenue Code, including taxable
4 state and municipal bond interest and excluding nontaxable interest income or
5 dividend income from federal government obligations; minus the items of loss and
6 deduction under section 702 of the Internal Revenue Code, except items that are not
7 deductible under s. 71.21; plus guaranteed payments to partners under section 707
8 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
9 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3r), (3s), (3t),
10 (3w), (5e), (5f), (5g), (5h), (5i), (5j), ~~and (5k), and (5n)~~✓; and plus or minus, as
11 appropriate, transitional adjustments, depreciation differences, and basis
12 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
13 loss, and deductions from farming. "Net business income," with respect to a natural
14 person, estate, or trust, means profit from a trade or business for federal income tax
15 purposes and includes net income derived as an employee as defined in section 3121
16 (d) (3) of the Internal Revenue Code.

(end ins 7-12)

History: 1989 a. 335; 1991 a. 39, 269; 1993 a. 16, 112, 490; 1995 a. 27, 209; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 99, 135, 255, 326; 2005 a. 74, 361, 479, 483; 2007 a. 20, 96; 2009 a. 2.

Duerst, Christina

From: Hein, Tanya

Sent: Monday, May 18, 2009 11:49 AM

To: LRB.Legal

Subject: Draft Review: LRB 09-2801/1 Topic: Income and franchise tax credit for property taxes paid on restaurant kitchen machinery and equipment

Please rush. Thanks!

Please Jacket LRB 09-2801/1 for the ASSEMBLY.

5/18/2009